epilepsy, stated unequivocally that a person acting under a state of automatism will not be conscious at the time. Turning to the appellant's own evidence, we find that he had the clearest recollection, going into considerable detail, of the events surrounding the act of killing: he remembered leaving his place of work to go to his quarters to get a drink, meeting his youngest child on the way and taking her with him, unlocking the door and entering the house where he noticed that the two elder children had followed him, letting go the youngest child and snatching up the knife, holding her behind him with one hand while he held the knife in the other, hearing the eldest child ask "what is the matter" and replying to her "wait", seeing the blood in the kitchen in front of the back door, feeling concerned at having left his work before the proper time, and locking up the house again and returning to his work. The doctor was not, perhaps, questioned in as much detail as might have been desirable on the form of unconsciousness associated with automatism, but it is difficult to see how, in face of the appellant's own evidence, the assessors could reasonably have found that the appellant was in a state of unconsciousness when he did the act, and in our view, the learned trial judge, in his summing-up, was right in rejecting the defence of automatism in favour of the theory that the appellant acted on an irresistible impulse.

Once the defence of automatism failed, there were only two alternatives left: that the appellant killed his child on an irresistible impulse or that he killed her for an undisclosed reason; the second alternative is, on the evidence of the appellant's temperament and his relations in general with his children so remote that the only reasonable conclusion is that he acted on irresistible impulse. It was, perhaps, unnecessary for the learned Deputy Public Prosecutor to speculate as to the cause of the irresistible impulse, but we see nothing objectionable in his having suggested one. We would add that irresistible impulse *per se* is no defence, and can only be a defence when it is proved to have been the result of insanity in law. The onus of proving this lay on the appellant and, in our view, he did not succeed in discharging it.

As regards the second main ground of appeal, having found that the appellant killed his child by inflicting upon her a deep wound in the throat with a knife which, as the doctor who held the post mortem examination described it, was "drawn a few times in the depth of the wound", and having reached the conclusion, as on the evidence he was bound to do, that the appellant was conscious of what he was doing, the learned trial judge could not reasonably have drawn any other inference from the evidence than that the appellant intended to kill and, in our view, the prosecution discharged any onus which lay upon them in this respect.

We do not regard any of the other grounds of appeal as having any weight. As to ground No. 3, the question whether the appellant did the act while suffering from an epileptic fit was considered, so far as it was material, in connection with the defence of automatism and, as we have said, was rightly dismissed. The evidence of Alamelu (P.W. 2) as to the nature of the fits from which the appellant suffered during the time they lived together is altogether inconsistent with his having been in the throes of such a fit when he killed the child. Ground 4 we have already disposed of in considering grounds 1 and 2. As to ground 5, the form of charge used in this case follows that set out in the Second Schedule to the Criminal Procedure Code, and section 443 of the Code permits it to be used. As to ground 6, while it is true that section 114(g) of the Evidence Ordinance, 1950 allows the Court to draw an inference unfavourable to the prosecution, from its failure to produce a witness who might have been produced, we do not consider that the failure to produce the six year old child in this case could affect the decision since on the evidence the conclusion that that it was the appellant who killed the child is inescapable.

For the reasons which we have given the appeal is dismissed.

Appeal dismissed.

GLENEAGLES HOTEL LTD. v. WONG JUE WHEE & 38 ORS.

[O. C. J. (Whitton J.) December 3, 1955]

[Singapore — Civil Suit No. 1427 of 1955]

Trade Disputes Ordinance, 1941, s. 5 — Industrial dispute — Picketing — Attending "at or near" a place where a person carries on business in furtherance of a trade dispute — Meaning of "at or near" — Contract of employment — Whether broken by workmen going on strike — Trade Union Ordinance, 1940, s. 20 — Labour Ordinance (Cap. 69), s. 8(5).

The plaintiff in this case was a company incorporated in Singapore which owns a hotel in Singapore. The defendants were members of the hotel service staff until August 26, 1955. On that day the defendants went on strike and did not return to work, but they continued to occupy the staff quarters on the premises until ordered by the Court to vacate them on an interlocutory application in this action. They also remained in the grounds of the hotel, and erected at the corner of a lawn in front of the hotel building, a tent which they or some of them occupied. They also erected and displayed "strike" banners and posters inside the grounds of the hotel. The

plaintiff claimed that the defendants had no right to remain on any portion of the grounds and premises of the hotel and contended that the defendants continuing to do so constituted acts of trespass. The defendants contended that they were permitted to do this under the Ordinance.

Held: (1) by going on strike and absenting themselves from work, the defendants broke their contract of employment and therefore lost their rights to use those portions of the premises which they had been occupying as servants of the hotel; (2) the words "at or near" a house or place in s. 5 of the Trades Disputes Ordinance, 1941, do not mean "in" and therefore that section does not confer a right to picket within a house or place; (3) the defendants were not entitled to picket in the grounds of the plaintiff's grounds and premises, after the termination of their contract: they were committing acts of trespass.

Cases referred to:—

(1) *Wong Mook v. Wong Yin & Ors.* (1948) M.L.J. 41.

(2) *Larkin v. Belfast Harbour Commissioners* (1908) 2 I.R. 214.

ACTION.

R. L. Eber for the plaintiff.

Defendants in person.

Whitton J. : — The plaintiff is a company incorporated in Singapore which runs a hotel at No. 6 Napier Road, Singapore. The defendants were members of the hotel service staff until 26th August 1955. On that day the defendants went on strike, and have never returned to work. They continue, however, to occupy the "boys'" quarters on the premises until ordered by the Court to vacate them on an interlocutory application in the present action, and they have remained on the grounds of the hotel up to the present date, having erected at the corner of a lawn in front of the hotel building a tent which they, or some portion of them, frequent, and also a number of 'strike' banners inside the grounds near the main entrance. These facts are not in dispute.

The plaintiff claims that the defendants have no right to remain on any portion of the premises, and contends their continuing to do so constitutes acts of trespass. The defendants have entered no formal defence to the action but it is clear from what has been said during the hearing that they seek to justify their continued stay on the premises by the contention that it is permissible under their alleged rights of picketing.

In considering the law applicable to the case the first point to be determined is whether when the defendants went on strike on 26th August they terminated the contract subsisting between themselves and the plaintiff company. Whether they gave notice or not does not, in my opinion, for reasons I shall proceed to state, affect the position as far as this point is concerned. The plaintiff in fact says that the defendants gave 48 hours notice on 24th August, but went on strike about 1 p.m. on the 26th, before this period had elapsed. As to this a vague suggestion was put to the plaintiff's manager in cross-examination, which he denied, that the defendants went on strike after he had issued them some sort of challenge, but no positive evidence was given in support of this suggestion. Be that as it may if the defendants did give notice they clearly terminated their contract since termination of contract is what notice essentially implies, whereas if they did not give notice their cessation of work was, I think, whether immediately or not, a determination of it by breach. In so saying I am aware of the need to bear in mind the possibility of statutory qualification of the common law position. In this connection *Wong Mook v. Wong Yin & Ors.*[1] is a helpful authority within limits. Section 20 of our Trade Union Ordinance, 1940, is identical with section 20 of the Trade Union Enactment 1940 of the Federated Malay States. It reads as follows:—

"No suit or other legal proceedings shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or in furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

I respectfully agree with the view of Willan C.J. expressed in that case the wording "on the ground only that such act induces some other person to break a contract of employment" contemplates that a person going on strike, even though the strike is not an illegal one, may break his contract of employment. But on the further question dealt with in *Wong Mook v. Wong Yin*[1] as to when an agreement shall be deemed to be broken this Malayan Union case cannot have the same weight, as the Singapore relevant provision — section 8(5) of the Labour Ordinance (Cap. 69) — while similar to, is not identical with, the provision of the Federation Labour Code quoted in the judgment. Section 8(5) reads:—

"An agreement for a period of one month shall be deemed to be broken — (a) by the labourer, if, before he has completed twenty-four days' work, he is continuously absent from work for more than one day, exclusive of holidays ordinarily observed by persons of his race or creed, without leave from the employer or other reasonable excuse; (b) by the employer, if he fails to provide work or pay wages as required by subsection (4)".

I confess to some difficulty in interpreting this section by reason of the reference to the completion of twenty-four days' work, but I do not think, whatever its construction; that it conflicts with the view the defendants broke their agreement, if not on the actual day they went on strike, at least at the beginning of

the next period of the agreement, which was, presumably, at the commencement of September.

If it is accepted the defendants terminated their contracts with the plaintiff it must follow, I think, that they thereby lost their rights to use those portions of the premises which they had been occupying because it can scarcely be disputed that this was a case where, the occupation was in the words of *Woodfall*, "subservient and necessary to the service", and so conferred no estate upon the defendant (vide *Woodfall's* Law of Landlord and Tenant 24th Edn. p. 12). In such circumstances the defendants' continued occupation must constitute a trespass unless by virtue of being engaged in a trade dispute they possess some statutory right which would alter the position. I shall now examine this point.

The right to picket is contained in section 5 of the Trade Disputes Ordinance, 1941, which reads:—

"It shall not be unlawful for one or more persons acting on his or their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute to attend at or near a house or place where a person resides or works or carries on business or happens to be or the approach to any such house or place (a) merely for the purpose of peacefully obtaining or communicating information; or (b) merely for the purpose of peacefully persuading or inducing any person to work or abstain from working:

Provided that if such person or persons so attends or attend in such numbers or otherwise in such manner as to be calculated (a) to intimidate any person in that house or place, or (b) to obstruct the approach thereto or egress therefrom, or (c) to lead to a breach of the peace; such attending as aforesaid shall be unlawful and shall be deemed to constitute an offence under paragraph (d) of section 4.

The crux of the matter as far as this case is concerned is whether the words "at or near" mean "in" or "upon" If they do it would seem clear the defendants have the right to remain on the premises for the purposes of peaceful picketing. Now our section 5 is similar to section 2 of the United Kingdom Trade Disputes Act, 1906, except for one or two minor differences of wording which do not affect the present matter. It is clear, therefore, our section was taken from the English Act, and I think it is legitimate to assume that when our legislators adopted the English provision in 1941 they were acquainted with the leading case of *Larkin v. Belfast Harbour Commissioners*[2] in which these words "at or near" were the subject of a judicial decision to the effect they did not mean "in", and that consequently our legislators intended to make local rights of picketing the same as were conferred by the 1906 Act as construed in the light of *Larkin's case.*

The reasons for the interpretation which was placed upon the words "at or near" will be found in the judgment of Lord O'Brien L.C.J., but for those to whom a copy of this Irish Report is not readily available the following brief summary of the matter may be of interest. The words "at or near" were originally contained in section 7 of the "Conspiracy, and Protection of Property Act, 1875", which made it an offence, *inter alia,* to watch or beset the house or place where some other person resided or carried on business etc. with a view to compelling such other person to do or to abstain from doing acts contrary to such other person's legal rights, but excepted from the operation of the section "attending at or near the house or place etc..... in order merely to obtain or communicate information". In the course of his judgment Lord O'Brien said:—

"Watching and besetting plainly means an external operation something not within a house or place, but without."

Now the saving clause of section 7 of the 1875 Act I have just mentioned was repealed by section 2 of the Trade Disputes Act 1906 on which, as I have said, section 5 of our Ordinance is based. By reason of this the Irish Court held that section 7 of the Conspiracy and Protection of Property Act was to be read as if section 2 of the Trade Disputes Act had been embodied into it, and that the words of section 2 must in like manner be read in connection with the words "besetting" and "watching", thus indicating what might be lawfully done without, but not within, a house or place.

Accepting then, as I do, that *Larkin v. Belfast Harbour Commissioners*[2] is an authority that to be logical in reaching my decision I must follow, I hold the words "at or near" of our section 5 cannot mean "in", and from this I conclude that the defendant were not entitled to picket in the grounds of the plaintiff's premises, and that in doing so after the termination of their contract they were committing acts of trespass.

For these reasons the plaintiff was entitled in my opinion to the relief he sought, and I gave oral judgment accordingly. It was not suggested the defendants could not legally carry on peaceful picketing on the highway outside the hotel premises.

Order accordingly.

Solicitors for the plaintiff: *Eber & Tan.*

ME PE PEANG v. LOH SEOW

[O. C. J. (Wilson J.) December 2, 1955]

[K. L. — Originating Motion No. 9 of 1955]

Landlord & Tenant — Control of Rent Ordinance, 1948, s. 13(1) — Whether an application can be made to quash the order of a Rent Assessment Board by way of Originating Motion.

This was an application made by way of Originating Motion to quash the order of a Rent Assessment Board.